

PUBLIC HEARING
COMMISSION ON STATE MANDATES

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TIME: 9:35 a.m.
DATE: Thursday, March 28, 2002
PLACE: Commission on State Mandates
State Capitol, Room 126
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported By:

DANIEL P. FELDHAUS
CSR #6949, RDR, CRR

A P P E A R A N C E S

COMMISSION ON STATE MANDATES

WILLIAM SHERWOOD, Acting Chair (Vice Chair)
Representative of PHILIP ANGELIDES
State Treasurer

JOHN HARRIGAN
Representative of KATHLEEN CONNELL
State Controller

JOHN S. LAZAR
City Council Member
Turlock City Council

CAL SMITH (Chair)
Representative of B. TIMOTHY GAGE, Director
State Department of Finance

JOANN E. STEINMEIER
School Board Member
Arcadia Unified School District

SHERRY WILLIAMS
Representative of TAL FINNEY, Interim Director
State Office of Planning and Research

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COMMISSION STAFF

PAULA HIGASHI
Executive Director

CATHERINE M. CRUZ
Staff Services Analyst

SHIRLEY OPIE
Assistant Executive Director

CAMILLE SHELTON
Senior Commission Counsel

PAUL M. STARKEY
Chief Legal Counsel

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 3 (Brown Act Reform, CSM 4469):

For City of Newport Beach (Claimant):

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A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 3 (Brown Act Reform, CSM 4469):
continued

For the State Controller's Office:

SHAWN D. SILVA
Staff Counsel
State Controller's office
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Sacramento, CA 95814

**Appearing Re Item 4 (Sex Offenders: Disclosure by Law
Enforcement Officers, 97-TC-15):**

For County of Tuolumne (Claimant):

PAMELA A. STONE
Legal Counsel
Maximus

For the Sacramento Sheriff's Department:

GARY BETTENHAUSEN
Detective
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Sex Offender Registration Detail
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For California State Association of Counties:

ALLAN BURDICK
Director
California State Association of Counties
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Sacramento, CA 95841

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 4 (Sex Offenders: Disclosure by Law
Enforcement Officers, 97-TC-15):

continued

For the California Department of Finance:

SUSAN S. GEANACOU
Senior Staff Attorney
Department of Finance

JOHN AL-AMIN
Budget Analyst
Department of Finance

For the State Controller's Office:

GINNY BRUMMELS
Section Manager
Local Reimbursement Section
State Controller's Office

SHAWN D. SILVA
Staff Counsel
State Controller's office

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ERRATA SHEET

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BE IT REMEMBERED that on Thursday, March 28, 2002, commencing at the hour of 9:35 a.m., thereof, at the State Capitol, Room 126, Sacramento, California, before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the following proceedings were held:

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ACTING CHAIR SHERWOOD: It is 9:35. We call this meeting of the Commission on State Mandates to order.

Paula, would you please call the roll?

MS. HIGASHI: Mr. Harrigan?

MEMBER HARRIGAN: Here.

MS. HIGASHI: Mr. Lazar?

MEMBER LAZAR: Here.

MS. HIGASHI: Mr. Smith?

MEMBER SMITH: Cal Smith for Tim Gage.

MS. HIGASHI: Ms. Steinmeier?

MEMBER STEINMEIER: Here.

MS. HIGASHI: Ms. Williams?

MEMBER WILLIAMS: Here.

MS. HIGASHI: Mr. Sherwood?

ACTING CHAIR SHERWOOD: Here.

MS. HIGASHI: The first item is Item 1, adoption of the minutes for the last meeting.

ACTING CHAIR SHERWOOD: Has everyone had a

chance to read the minutes?

Are there corrections, deletions, additions?

Can we have a motion, please?

MEMBER STEINMEIER: Move approval, please.

ACTING CHAIR SHERWOOD: We have a motion. Do we have a second?

MEMBER WILLIAMS: Second.

ACTING CHAIR SHERWOOD: We have a motion and a second.

All those in favor?

(A chorus of "ayes" was heard.)

ACTING CHAIR SHERWOOD: Opposed?

MEMBER SMITH: Abstain.

ACTING CHAIR SHERWOOD: The motion passes.

MS. HIGASHI: The proposed consent calendar consists of Item 2, which is a Proposed Statement of Decision; and this is on the Community College District test claims that were heard last month.

ACTING CHAIR SHERWOOD: Thank you, Paula.

Does anyone wish to come forward on this consent item, or do we have any questions from the Board?

MEMBER HARRIGAN: I'll move.

MEMBER LAZAR: Second.

ACTING CHAIR SHERWOOD: We have a second.

All those in favor?

(A chorus of "ayes" was heard.)

ACTING CHAIR SHERWOOD: Opposed?

The consent item is approved.

MS. HIGASHI: I'd just like to note, for purposes of the record, that the Department of Finance had given me one suggested change for the remainder of that test claim, which won't be on the agenda until the May hearing. So for purposes of the May hearing, we'll be making that correction; but it's not part of this agenda item.

ACTING CHAIR SHERWOOD: It's not pertaining to this issue today on consent?

MS. HIGASHI: Correct. But it is set for the May hearing; and we'll make that correction.

ACTING CHAIR SHERWOOD: That is very good, since we've already voted.

MEMBER STEINMEIER: We're too fast.

MS. HIGASHI: But it was for the May item.

ACTING CHAIR SHERWOOD: Did we move too quickly for you?

MS. HIGASHI: No, it was for the May item that he had given me the correction.

This brings us to Item 3, the Proposed Parameters and Guidelines on Open Meetings Act, Brown Act Reform. This item will be presented by Shirley Opie,

Assistant Executive Director.

MS. OPIE: Thank you.

Good morning.

ACTING CHAIR SHERWOOD: Good morning.

MS. OPIE: This item is the Proposed Parameters and Guidelines for the Brown Act Reform test claim.

Eligible claimants that incurred increased costs for preparing and posting an agenda, including closed-session items for the new types of legislative bodies added by Brown Act Reform, can claim reimbursement beginning January 1st, 1994, which is the effective date of the test claim statutes.

Eligible claimants that incurred increased costs to apply to the closed-session requirements of Brown Act Reform, specifically, to disclose in an open meeting prior to holding any closed session, each item to be discussed in the closed session; to reconvene in open session prior to adjournment and report the actions and votes taken in closed session; and to provide copies of closed-session documents and claim reimbursement beginning January 1, 1994.

Eligible claimants will have three options for claiming reimbursement for the costs of preparing and posting an agenda, including the closed session items. Those are actual time; standard time, which is a set

amount per agenda item, that's based on the type of claimant; or three, a flat rate per meeting.

The basis for the standard times and the flat rate were established in amendments to the Open Meetings Act Parameters and Guidelines that were adopted by the Commission last November, in November 2000.

Only one reimbursement option can be selected for each type of meeting during a fiscal year, for claiming costs incurred for agenda prep and posting.

Eligible claimants must claim actual costs incurred for subsequent reporting of actions taken in closed session, providing the copies of the documents that were approved or adopted, and training, regardless of the reimbursement option that they choose to claim costs for agenda preparation and posting.

Beginning with the annual reimbursement claims filed for 2001-2002 fiscal year costs, all claimants will claim costs for all reimbursable activities for Open Meetings Act and Brown Act Reform under these Parameters and Guidelines. Until that time, however, reimbursement for Open Meetings Act must be claimed under that program as prescribed in the State Controller's claiming instructions.

Based on the evidence in the record, staff included ongoing training as a reimbursable activity

because it constitutes a reasonable method of complying with the mandated activities. However, it is limited to training the members of only those legislative bodies that hold those closed sessions; and further, to the activities related to closed-session requirements.

Staff is proposing some clarifying changes that are listed on the errata sheet. It's the pink sheet that you have for this item.

These changes do three things:

One, they clarify that the legislative bodies that were previously subject to the requirements to prepare and post an agenda can claim reimbursement for preparing closed-session items. However, they can only use the actual costs or the standard time reimbursement methodology.

Secondly, the proposed changes clarify that the flat rate includes all costs for preparing and posting an agenda, including closed-session agenda items. Claimants that filed reimbursement claims under Open Meetings Act using the flat rate cannot file another reimbursement claim using the flat rate for agenda preparation of the closed-session items.

And third, cross-references to the provisions related to training are added to clarify that if the training that is provided is broader than Brown Act

Reform closed-session requirements, only the pro rata portion of the training is reimbursable. A technical change is also proposed to correct a code section reference.

Staff recommends that the Commission adopt the claimant's proposed parameters and guidelines, as modified by staff, which began on page 13.

Staff also recommends that the Commission authorize staff to make any nonsubstantive, technical credentials to the Parameters and Guidelines, following the hearing.

Will the parties please stated your names for the record?

MS. STONE: Good morning, ladies and gentlemen of the Commission. Pam Stone on behalf of the City of Newport Beach.

MR. EVERROAD: Glen Everroad, City of Newport Beach.

MR. PAULIN: Matt Paulin, Department of Finance.

MS. BRUMMELS: Ginny Brummels, State Controller's Office.

MR. SILVA: Shawn Silva, State Controller's office.

MS. GEANACOU: Good morning. Susan Geanacou, Department of Finance.

ACTING CHAIR SHERWOOD: Thank you.

I think we'll follow our normal process and we'll ask the claimants to address the Board, and then we'll move to the Department of Finance and State Controller's Office.

MS. STONE: Thank you very much, Mr. Chairman.

First of all, we'd like to thank the staff for their incredible amount of effort and time that has gone into this. It has not been easy, going through some of the permutations; and we do concur that the only way one can obtain reimbursement for closed-session items is using actual time or standard times; and that if one uses the flat rate, it is assumed to encompass all closed-session items as well as reporting out. And that is extremely clear.

The only difference of opinion that we have with staff is concerning the training component. We believe that the training component has been unfairly limited to just training on closed-session items. And this is the reason: As you will see from your Parameters and Guidelines -- and we're working off of so many different copies of this, I can't tell you which portion -- but what it discusses is that, commencing January 1, 1994, the amendments to the Brown Act brought into the requirements of the Open Meetings Act a substantial

number of advisory boards and commissions that previously were not subject to it, to the Brown Act, or it was unclear as to whether or not they actually fell within the parameters of the Brown Act.

I hate to go back to ancient history, but back when the Brown Act Reform was passed, I was working for Fresno County, in the County Counsel's office, and honestly, I can't remember if I was a senior or chief deputy, because I received a promotion during that period of time. But it was my responsibility to go out and provide training to those advisory boards that previously had not been subject to the Brown Act. I remember that two of the boards that I had to do, amongst others, were the Mental Health Advisory Board, as well as the Drug and Alcohol Advisory Board that had been created by state statute.

I remember trying to impress upon one gentleman, who was employed in education and was working on a law degree, that the only way you could discuss something is if it was on the agenda; and if you wanted to discuss something, you had to, in fact, direct staff to place it on the agenda or you could not discuss it.

Furthermore, that, obviously, since 1986 there's been an opportunity for public comment; and a lot of times, the public will come up and make a point. But,

obviously, your board or commission cannot make any discussion of that fact unless it has been agendized. And the most that staff could do -- or the Board could do would be to prefer it to staff, to have it set on a future agenda.

So although what we're requesting is to expand it to those advisory boards and commissions for training that were not previously required to do so.

I know there is some concern regarding costs. Generally speaking, a lot of the members of these advisory boards and commissions are volunteer positions.

And, therefore, there would be no costs for the volunteers because they're not in paid positions. What it would be is basically the time of the trainer, who had to go prepare materials for this particular board or commission, and tell these volunteers that, "Yes, you can do this. The Brown Act says you can," or, "No, you can't do this. The Brown Act says you can't."

And, you know, it was a substantial endeavor during 1994 to explain to individuals that it's not a method of not being able to accomplish what you want, but being able to set it in such a manner that you can, in fact, have a discussion and action items, as long as it's properly agendized.

So in that respect, we're requesting that the

claimant's original terminology with respect to training, which would include advisory boards and commissions which were not previously subject to the Brown Act, encompassed within the purview of training.

Thank you very much.

ACTING CHAIR SHERWOOD: Thank you.

Mr. Everroad, did you wish to make a comment?

MR. EVERROAD: I, too, would like to thank staff for their efforts in working through this complex claim, and just echo the opinion of Pam Stone that training is a significant component in compliance with this Brown Act and Open Meetings Act requirement; and we'd urge the members to consider our situation. We have these costs, and we think that, appropriately, they should be reimbursed.

Thank you.

ACTING CHAIR SHERWOOD: Thank you.

Matt?

MR. PAULIN: Matt Paulin, Department of Finance.

We are opposed to inclusion of the training based on the fact that it wasn't included in the staff's Statement of Decision or the Commission's Statement of Decision. So that was our grounds for opposition to inclusion of the training.

ACTING CHAIR SHERWOOD: Thank you.

Shawn?

MR. SILVA: The Controller's office is in agreement with the staff analysis. And our position on the training would essentially be the same as Finance, that it would be going beyond what was provided in the Statement of Decision.

ACTING CHAIR SHERWOOD: Thank you.

Would staff wish to make any comments to Pam?

MS. SHELTON: Just a couple of comments on the training, and I think Shirley wants to make a clarifying comment.

With regard to the member training requested by the claimants, they have requested training the entire membership of the body on the entire Brown Act. The entire Brown Act has never been the subject of the test claim. The test claim is just limited to five code sections, and there's only a Statement of Decision on five code sections. So providing training on the entire Brown Act would be going beyond the scope of this Commission's Statement of Decision.

Also, a lot of those provisions were enacted originally in 1953, so they may not even qualify for a reimbursement under Article XIII, Section 6, in the first place.

Finally, the last reason we did not recommend

training on the activities of preparing and posting the agenda is because those activities are performed by staff members, generally, and not by members of the Board.

ACTING CHAIR SHERWOOD: Thank you.

Board Members, any questions?

MS. SHELTON: One more. There was one more, too. The Commission is not precluded from having a ruling on a training issue at the P's and G's phase even though it is not in the Statement of Decision. Training, the Commission does have authority to include activities in the Parameters and Guidelines that are reasonably related to a mandated activity, so you can go beyond those activities listed in the Statement of Decision.

ACTING CHAIR SHERWOOD: Thank you. I think the issue we've heard this morning have been addressed in the material brought before us, so I believe all the members have the pros and cons on these issues.

MEMBER LAZAR: I would just like to ask the claimants the response to --

ACTING CHAIR SHERWOOD: Yes.

MS. STONE: I'm sorry, I didn't --

MEMBER LAZAR: I just wanted to ask for a response to legal counsel's response to your statement.

MS. STONE: I would agree that our original

request was for all of the training on the Brown Act. At this point in time what we're asking for is training to those boards and commissions this were brought under the Brown Act in 1994. And that is because these individuals previously were not subject to it, and they now have to post an agenda and they have to prepare the agenda.

And, yes, we are aware that staff generally prepares an agenda; but I have also unfortunately participated in more agenda preparation meetings than I care to relate in my history; and it is not uncommon for board members to raise issues that they wish to have addressed; because unless staff places it on the agenda, your board or commission is precluded from discussing the item. And so the board and commission members need to be aware that if they have an issue that needs to be discussed, it needs to not only be on the agenda, but the terminology needs to be appropriate, such that the action desired by the board or commission can actually be taken.

ACTING CHAIR SHERWOOD: John, any further questions?

MEMBER LAZAR: No, thank you.

Go ahead, it's your turn, John.

MEMBER HARRIGAN: I was going to say --

ACTING CHAIR SHERWOOD: Mr. Harrigan?

MEMBER HARRIGAN: Camille, do you have any response to that? I mean, they're narrowing it. If I heard what you were saying, you were concerned about going back to the beginning of the Brown Act, back in the 1950's.

MS. SHELTON: Well, I'm not sure that they have narrowed it because they're still requesting reimbursement for training the new members on the Brown Act, and there has not been a Commission decision on the Brown Act.

One thing, if you did decide to give training on those two activities, which are really just limited to preparing and posting an agenda, the old P's and G's for the Open Meetings Act does not include a reimbursable component for training. So the old legislative bodies are not getting reimbursed for training but the new ones would be, which could be seen as inconsistent.

MEMBER HARRIGAN: Thank you.

ACTING CHAIR SHERWOOD: Thank you.

MEMBER SMITH: I have a question to the staff. On your comment that the Board is not prohibited on considering an issue like training that's not addressed in the Statement of Decision, has that occurred on a regular basis in the past --

MS. SHELTON: Yes.

MEMBER SMITH: So historically, this has not happened? This is not precedent-setting?

MS. SHELTON: That's correct, and training has been approved by the Commission at the Parameters and Guidelines phase.

MEMBER SMITH: And one follow-up, a very quick question on the last discussion: The issue -- as a novice to this, am I reading it correctly that the issue of going back, potentially addressing issues that were not initially a part of this, opens up the entire Brown Act, which is more appropriately a part of a different submission or claim?

MS. SHELTON: No. I think that would be too broad. It's limited in scope at this phase. I mean, at the test claim phase, there has to be ruling on the activities that are expressly required by the test claim statutes. Those are the activities that the Legislature has adopted and enacted.

All the Commission can do at the Parameters and Guidelines phase is to include activities that are reasonably related to those expressly required activities in the statute.

So if, for example, somebody was requesting reimbursement on a part of the Brown Act which has never come before the Commission, which is included in the

statute, that would go beyond the Commission's Statement of Decision, in that case.

MEMBER LAZAR: So, in your opinion, there's no way to fix it, to accommodate what the claimant is requesting?

MS. SHELTON: It would have to be limited. I mean, to request reimbursement on the entire -- for training on the entire Brown Act would go beyond the scope. I don't know how -- I guess the only way, if you wanted to give them training, would be to only limit training to those reimbursable activities in the Statement of Decision and that's simply preparing or posting the agenda, which, as I mentioned earlier, staff routinely does those activities.

MEMBER LAZAR: What's the claimant's feeling about that?

MS. STONE: The claimant believes that for those bodies that came under in January 1 of 1994, it was very incumbent that they be trained on the issue of the agenda itself. And there's a real reason for that.

I believe that all of you -- and I apologize, Mr. Smith, because we went through this at the original test claim hearing -- the problems, if you violate the Brown Act, is that any action that was taken by the board or commission is voidable, which can result in a

substantial amount of liability to the board or commission, sometimes to the members individually, as well as to the public entity.

So when you were talking about training on the agenda, not only are you talking about training on the fact that you can only discuss that which is agendized, but also that you can only take that action which is on the agenda, and also the penalties for failure to comply.

This really is the heart of the Brown Act, when you come right down to -- the heart of the Brown Act being the appropriate agendizing, the fact that you have to allow public members to speak, and the proper methodology for addressing items in closed session; and that if there is no authority for handling something in closed session, you cannot go there.

And so this is what we believe, that if there is training to the new boards and commissions on reimbursable activities and the consequences for violation, we'd be extremely satisfied. And it could be prorated.

MEMBER STEINMEIER: Can I say something?

ACTING CHAIR SHERWOOD: Joann?

MEMBER STEINMEIER: I would support that.

It is a little unfortunate that we didn't look at training the staff with those boards because those people

on a regular basis advise them. Perhaps through the training process of the board members, though, the staff either would be present and a part of that so that they're all hearing the same thing, at the same time. There are horror stories out there of school boards and city councils who have gone afoul of this law; and historically, no one ever went after them. But district attorneys are now starting to take this seriously. And certainly in L.A. County, there have been people actually sentenced to Brown Act school, and publicly ridiculed for violating the Brown Act.

So I think it is a serious matter. And I would support the idea of adding that narrow addition of training members on the proper agendaing of an item and how those actions have to be displayed on an agenda in order to be able to take that action at that particular meeting. I do support that idea.

MEMBER LAZAR: Would you make that a motion?

MEMBER STEINMEIER: Yes, I'll move that.

MEMBER LAZAR: I'll second it.

MS. SHELTON: Can I --

ACTING CHAIR SHERWOOD: Sure.

MEMBER STEINMEIER: A clarification. I knew that was coming, Camille.

ACTING CHAIR SHERWOOD: And also if we could

take any further comment from the Board before we vote on that.

MS. SHELTON: Are you talking about then training just for the new legislative bodies --

MEMBER STEINMEIER: Yes.

MS. SHELTON: -- that's become subject to the Brown Act which are identified on page 27, the first three bullets?

MEMBER STEINMEIER: Let me double-check that.

I believe that's what Ms. Stone is asking.

MS. STONE: Yes, it is.

MEMBER STEINMEIER: Yes.

MS. SHELTON: And also, is your motion for one-time or ongoing training?

MEMBER STEINMEIER: Well, obviously, there is an initial training. And then for new members to these bodies, there would be additional training. And I think somewhere we talked about that, new members, on some other items -- new members that need to be trained.

MS. SHELTON: Because the recommendation at this point, as far as closed-session training, the staff has recommended ongoing training for that.

MEMBER STEINMEIER: To be consistent, ongoing makes sense; is that what you're saying, Camille?

MS. SHELTON: It would be up to the Commission.

MEMBER STEINMEIER: Well, let's say "ongoing" then, to be consistent with the other. If you have a lot of different ones, it gets very confusing for the Controller's office, as well as the claimants.

MS. GEANACOU: Excuse me, if the Chair will so permit me, may I still make a comment on behalf of Finance, please?

ACTING CHAIR SHERWOOD: Definitely. I thought what we might do first is go to the Board members --

MS. GEANACOU: Very well.

ACTING CHAIR SHERWOOD: -- and then we'll very definitely come back to you.

MS. GEANACOU: Thank you.

MEMBER STEINMEIER: So that's what it is, "ongoing."

ACTING CHAIR SHERWOOD: Board Members? John?

MEMBER HARRIGAN: Thank you.

If we accepted this motion, is it something that the administrative bodies can interpret and follow? I'm addressing the Controller's office.

MS. BRUMMELS: I would like to think that those legislative bodies would need to be more clearly defined within the Parameters and Guidelines, so that there would be ease, and it would be clearly identified as to which bodies would be eligibility and for which time period

that training would be allowable.

MEMBER HARRIGAN: Okay.

ACTING CHAIR SHERWOOD: Any further comment from the Board?

The Department of Finance?

MS. GEANACOU: Yes, thank you. Susan Geanacou, Department of Finance.

If the Commission is inclined to include training in the parameters and guidelines, Finance would request that the training be limited to a one-time basis, as noted by staff, as opposed to training provided on an ongoing or refresher basis. Simply that persons coming under this requirement be provided -- be limited to one-time training, and that it be one time and not ongoing or refresher training.

ACTING CHAIR SHERWOOD: Thank you.

MEMBER HARRIGAN: Can I ask for clarification?

ACTING CHAIR SHERWOOD: Yes.

MEMBER HARRIGAN: When you said "one time," you're not talking about one time at this point; but as new members would come on to the Commission, that there would be training at that point?

MS. GEANACOU: That's correct. Each person who would be expected to be aware of this would receive training on a time-appropriate basis, depending on when

they came on board, so to speak, yes.

MEMBER HARRIGAN: Thank you.

MEMBER STEINMEIER: I have a comment,
Mr. Chair, to follow up on John's direction.

ACTING CHAIR SHERWOOD: Yes, Joann?

MEMBER STEINMEIER: As a practical matter, when new members come on to any kind of a body, it would cost the same amount to train all of them on an ongoing basis as it would be to add one or two more people each time. There really would be no cost difference, just doing one training session. And so -- I don't know how to phrase this -- but the reality is that it wouldn't be any more expensive to do it on an ongoing basis than it would be as new members come on board. Because there is usually a pretty good turn-over. So it would just happen every time there are new members, you get the training again; and everybody gets the training again, but not every year for every person.

So as a practical matter, there really is no cost difference and probably would be more effective.

ACTING CHAIR SHERWOOD: Pam?

MS. STONE: Thank you very much, Mr. Sherwood.

Mr. Harrigan, a lot of boards and commissions have volunteers, in which event, the only cost you have is for the trainer; because, in large part, these

particular training sessions are agendized and heard in open session because it's one place where, obviously, in accordance with the Brown Act, you can, in fact, have everybody present; it's agendized; you provide the training; it's open to the public the knowledge.

So when you have board and commission members that are volunteers, it costs absolutely nothing because all we're really going to be getting is the cost of the trainer. That's the only time you're going to have situations is when you have board and commission members who are on staff because of their position, in which case you would have their salaries.

With regard to Ms. Brummels' request that you have some way of determining where all these boards and commissions are, unfortunately, every jurisdiction has different boards and commissions. Obviously, there's some that you're required to have by statute. But the only thing I have seen in the course of going through the Open Meetings Act and all the incorrect claims in Open Meetings Act, is that there were no two jurisdictions that were similar.

And I understand, Ms. Brummels, either the city clerk, county counsel, the executive department of the school will have a listing of the boards and commissions, but not always. And that's my only comment in response

to that.

ACTING CHAIR SHERWOOD: Thank you, Pam.

MS. STONE: Thank you, sir.

ACTING CHAIR SHERWOOD: I would like to ask staff to comment on this. I think Ms. Brummels' comments are to the point because we want to be as exact as possible. In other words, we need to be more exact as we move into the future.

My tendency is to vote for the staff's recommendation, as it stands at the moment. If I were going to move towards voting for an amended case, I would want to be sure that what we're doing, number one, is legal; number two, that it's framed very, very tightly. So I think the amendment, Joann, would have to be really very specific in nature.

But once again, I would like to hear from staff as to whether this motion, frankly, would be within our purview.

MS. SHELTON: Well, the motion is within your purview because you would be finding that training members on posting and preparing an agenda would be reasonably related to those two activities. You can make that motion. I mean, it's something within your authority to do.

ACTING CHAIR SHERWOOD: And within the Statement

of Decision?

MS. SHELTON: Yes, if it's limited to those two activities, it would be limited to preparing or posting the agenda.

ACTING CHAIR SHERWOOD: Okay.

MS. SHELTON: As far as identifying bodies, they already are identified in the P's and G's as those three that Joann mentioned, you know, the local bodies created by state and federal statute, et cetera. So those would be identified. And then it would have a reimbursement period beginning January 1, 1994.

One thing, if that happens, though, just realize that the legislative bodies that were subject to the Brown Act before, under the Open Meetings Act, would not be receiving training.

ACTING CHAIR SHERWOOD: That, I believe, has been made clear.

Staff, any further comments?

MS. SHELTON: No.

ACTING CHAIR SHERWOOD: Mr. Burdick, I notice you've wandered up to the table, which is not unusual.

MR. BURDICK: Thank you very much, Chairman Sherwood and Members of the Board.

I thought maybe I could put this into a little better context for the state members, because I don't

think you quite really understand the magnitude of this particular bill. This was in one of the most significant pieces of legislation before local agencies in the '93-94 year, because it made a wide range of changes to the Ralph M. Brown Act that was amended in 1986, your original mandate. And as a result of that, the League of Cities and other associations actually prepared published booklets to people to explain the differences.

So if you look at it kind of like the Bagley-Keene Act that you're under, and there was a major rewrite and change to that, the question would be: Would you just talk about the changes, or do you show within the Bagley-Brown Act (sic) what stayed and what didn't?

And that's exactly what happened in local government, is that when you do this, you have to kind of go through the process and say, you know, "This didn't change. This did change." But this was a very comprehensive and expansive change to the Brown Act. It was not an effort just to make a few minor changes. This was the work of the Attorney General, of a number of state agencies, obviously the taxpayers' association, the newspaper publishers and all the local agencies. And this was a very long and tedious process to try to clarify the 1986 amendment, which is the current mandate.

So this was not just a small, little bill out

there that made a few changes. This made a number of changes and clarifications. And in order to do the training on this -- and I participated in some sessions as a presenter on some of these sessions -- I can tell you, you can't just say, you know, kind of, "This is what it is." You have to kind of explain what was there before, what is there now, what has changed, what hasn't been changed.

So this is not -- the training on this, I don't think you can differentiate it from saying "You can only talk about the changes"; I think you have to explain whole law process, what changed and how it relates, one to the other. I just don't think there is any reasonable or practical way that anybody actually did training where they didn't discuss other parts of the statute.

It could also be made analogous to the change when this went from the Commission on State Mandates, under the old Board of Control, to the Commission on State Mandates. A lot of that language remained the same and some of it was changed.

But I think the members and the people that went through there had to go through the whole process to look at what was new, what was old, what was in place. You couldn't just talk about, you know, what may have changed in that because there was a lot of changes. But I would

grant that if you went back and looked at those two items, that probably at least half of the language is probably verbatim from pre-'85, and half of it has changed. And so I think when you do that kind of training, you do have to cover the whole subject.

And I don't think there's any way to just say that we're just going to train on those specific pieces that were changed. I think you have to address the whole act because of the comprehensive nature of this particular statute.

ACTING CHAIR SHERWOOD: Thank you.

Camille?

MS. SHELTON: Just a comment. A reminder that the whole act has never been brought before the Commission. There isn't a Commission decision on the whole Brown Act.

ACTING CHAIR SHERWOOD: Thank you.

Joann, you had a motion and a second.

MEMBER STEINMEIER: Ms. Stone has more thing. I see fingers.

MS. STONE: Mr. Sherwood, I have a compromise that I would like to tender and offer, to see if this makes sense. And, I don't know, those of you who were present at the original test claim hearing, part of your materials, I did show you the training materials

I believe used not only by the League of Cities but by Fresno County that showed side-by-side comparisons of the old law and new law.

It could probably be, as a compromise, I would like to offer 50 percent of the training that is done to new boards and commissions, and I think that would take care of an issue of having to determine what the pro rata portion is. So instead of doing pro rata portion, just do a flat 50 percent of training of the new boards and commissions, that come in since 1994. I think that would take care of the issue and would make it easier for the State Controller's office -- I mean, this is just an offer in compromise.

MEMBER LAZAR: It's like the Legislature, huh?

ACTING CHAIR SHERWOOD: Would staff like to add a comment to that?

MS. SHELTON: You have the authority to accept it. You might want to hear from the parties at the table. But you would be finding that the 50 percent would be reasonably related to the Commission's Statement of Decision on reimbursable activities.

ACTING CHAIR SHERWOOD: I don't think we have enough information to know that 50 percent makes any sense. And, quite frankly, we still get back to the issue of one-time posting and the agenda, which,

Mr. Burdick, I think would like to see it go to a much wider interpretation than that, which I don't see.

Joann -- do we have anyone else that wishes to speak to the issue?

Shawn?

MR. SILVA: A question. Our concern here is, I think, more procedural; and that is, we're starting to talk about lots of different language and options and proposals; and we have nothing on paper. This is all verbal and off the cuff. And I believe the concern would be that we're not really sure where we're going, and that something in writing -- potentially putting this off for another hearing with something in writing from claimants of exactly what, in writing, their proposal is so that the state agencies can review it and make an intelligent comment, and that that can come before the Commission and we would have something in writing for which you could all have prepared for and know what we're voting on.

ACTING CHAIR SHERWOOD: Thank you, Shawn.

MEMBER SMITH: The representative addressed the issue I was going to ask them about.

ACTING CHAIR SHERWOOD: I think that's very true; and I'll continue this item for that information. Right now, of course, we have a motion and a second before us. And I don't know what Ms. Steinmeier wishes

to do on that. Or, of course, we could always take a motion on the staff's report as it stands on the P's and G's.

MEMBER STEINMEIER: I'd like to withdraw my motion and continue this, so we have time to really consider some specific language; and I hope Ms. Stone will to participate in that.

MEMBER LAZAR: I'll withdraw my second.

ACTING CHAIR SHERWOOD: Fine.

Ms. Higashi, do you have a comment?

MS. HIGASHI: May I suggest procedurally that someone make a motion to either amend Ms. Steinmeier's original motion and --

MEMBER HARRIGAN: I'll make a motion to amend Ms. Steinmeier's motion by asking for a deferral of this item until --

MS. HIGASHI: Until the next agenda.

MEMBER HARRIGAN: -- the next subsequent meeting.

MEMBER STEINMEIER: Ms. Steinmeier will second that.

ACTING CHAIR SHERWOOD: We have had a motion. We have a second.

Would you take roll on that?

MS. HIGASHI: Mr. Harrigan?

MEMBER HARRIGAN: Aye.

MS. HIGASHI: Mr. Lazar?

MEMBER LAZAR: Aye.

MS. HIGASHI: Mr. Smith?

MEMBER SMITH: Aye.

MS. HIGASHI: Ms. Steinmeier?

MEMBER STEINMEIER: Aye.

MS. HIGASHI: Ms. Williams?

MEMBER WILLIAMS: Aye.

MS. HIGASHI: Mr. Sherwood?

ACTING CHAIR SHERWOOD: Aye.

The motion passes. I'd like to thank everyone for coming up today on this issue.

MS. HIGASHI: This brings us to Item 4, another set of Proposed Parameters and Guidelines. This is on the "Sex Offenders: Disclosure by Law Enforcement Officers," better known as "Megan's Law." And this item will be presented by Cathy Cruz.

MS. CRUZ: Good morning.

ACTING CHAIR SHERWOOD: Good morning, Cathy.

MS. CRUZ: On August 23, 2001, the Commission adopted its Statement of Decision partially approving the "Sex Offenders: Disclosure by Law Enforcement Officers" test claim. The Commission determined that the test claim legislation, which concerns the registration of

certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies, imposed a reimbursable new program upon local agencies and community college district law enforcement agencies by requiring specific new activities.

Before you are the claimant's proposed parameters and guidelines, as modified by staff, for the "Sex Offenders: Disclosure by Law Enforcement Officers" program. Staff recommends that the Commission adopt the claimant's proposed parameters and guidelines, as modified by staff, which begins on page nine.

Will the parties and representatives please state their names for the record?

MS. STONE: Good morning. Pam Stone, on behalf of the County of Tuolumne.

MR. BETTENHAUSEN: Gary Bettenhausen, detective, with the Sacramento Sheriff's Department, Sex Offender Registration Detail.

MR. BURDICK: And Allan Burdick, on behalf of the California State Association of Counties.

MS. GEANACOU: Susan Geanacou, on behalf of the Department of Finance.

MR. AL-AMIN: John Al-Amin, Department of Finance.

MS. BRUMMELS: Ginny Brummels, State

Controller's office.

MR. SILVA: Shawn Silva, State Controller's office.

ACTING CHAIR SHERWOOD: Thank you.

Claimants, do you wish to make a presentation?

MS. STONE: Yes. Good morning, Members of the Commission.

I would like to relay to you Lieutenant Steely's disappointment at not being able to attend. He is the gentleman from the County of Tuolumne. Unfortunately, they have a very small sheriff's department, and they have recently discovered a number of bodies in New Mellones, which has necessitated his attention and his inability to attend.

We would like to -- on behalf of the County of Tuolumne, I've been authorized to indicate to you that we do concur with staff's Parameters and Guidelines, as modified, and request their adoption.

I have with me Detective Bettenhausen from the Sacramento Sheriff's Department. In the event you have any questions pertaining to the program.

Thank you.

ACTING CHAIR SHERWOOD: Thank you, Ms. Stone.

Thank you for coming today, too.

MR. BETTENHAUSEN: Thank you.

ACTING CHAIR SHERWOOD: Mr. Burdick?

MR. BURDICK: Allan Burdick, again, on behalf of the California State Association of Counties, and I'm just here in support of staff's recommendation and to answer any questions that there may be.

ACTING CHAIR SHERWOOD: Thank you.

The Department of Finance?

MR. AL-AMIN: John Al-Amin, Department of Finance.

We also are in concurrence with the staff's analysis of the parameters and guidelines, as proposed.

ACTING CHAIR SHERWOOD: Thank you, John.

The State Controller's Office?

MR. SILVA: Actually, it's not as bad as it may seem.

ACTING CHAIR SHERWOOD: You've got us worried, Shawn.

MR. SILVA: We are also in concurrence.

This document raises an issue that you might remember from the last meeting, in which we will incorporate in all of our future comments, and which will then hopefully have incorporated the language and we won't have to go through this. And this is, for this one, on page 16, "supporting data," we discussed this issue before, the fact that the language in "A," "source

documents," could potentially be confusing to a claimant.

And from our perspective, the primary purpose of that section is to note that all the incurred costs should be traceable to source documents. And the subsequent listing in the second sentence is of documents in general, not specifically source documents. So we want to clarify that a source document is a document that is created contemporaneously with the event in question.

Documents may include subsequently-created summaries, and just to clarify so that the claimants don't get confused and end up potentially disposing of source documents when they really need to retain those and submit those with the claim.

And as I indicated, we will have proposals for specific language, subsequently, so that we don't have to go through this routine again.

ACTING CHAIR SHERWOOD: Thank you, Shawn. I appreciate that. I was hoping in the future we could do that. And I would imagine staff and claimants and yourself could get together and come up with specific instructions. And I think it would be appreciated by all of us.

Board Members, do you have any questions?

If not, do we have a motion on the staff's recommendation?

MEMBER STEINMEIER: I move the staff recommendation.

MEMBER WILLIAMS: Second.

ACTING CHAIR SHERWOOD: We have a second.

All those in favor of the staff recommendation, would you please -- I think we should take roll on this.

MS. HIGASHI: Mr. Lazar?

MR. LAZAR: Yes.

MS. HIGASHI: Mr. Smith.

MEMBER SMITH: Mr. Chairman and Members, I would recuse myself from this issue, since I've been involved on this, on the other side, in our department.

ACTING CHAIR SHERWOOD: Thank you, Mr. Smith.

MS. HIGASHI: Ms. Steinmeier?

MEMBER STEINMEIER: Aye.

MS. HIGASHI: Ms. Williams?

MEMBER WILLIAMS: Aye.

MS. HIGASHI: Mr. Harrigan?

MEMBER HARRIGAN: Aye.

MS. HIGASHI: Mr. Sherwood?

MEMBER SHERWOOD: Aye.

MS. HIGASHI: The motion is carried.

MS. STONE: Thank you very much.

ACTING CHAIR SHERWOOD: Thank you for coming today.

MS. HIGASHI: As you know, Item 5 has been postponed. That was the proposed adoption of the Parameters and Guidelines for Handicapped and Disabled Students.

And this brings us to Item 6, which is the Executive Director's Report.

ACTING CHAIR SHERWOOD: On Number 5, that's the postponement on the handicapped children issue; that was asked for by claimants.

MS. HIGASHI: That request was made by claimants. It's my understanding, just from the meetings that they've been having this week, that we might get another request for postponement on that, to move it from the -- to allow them more time to prepare their comments on that agenda item; and if we ensure that state agencies also have an opportunity to respond, it may push it as far as the June agenda. But so far, I have not received that communication. But I believe I will be receiving one from the County of Los Angeles.

ACTING CHAIR SHERWOOD: Well, we always want to have as much information as possible, so that we can come to the correct decision. I think we also realize that we have, what, over 60 cases already on the docket; and I would hope that we could move forward quickly in the future. And as we postpone and put matters off, it may

cause a logjam.

Thank you.

MS. HIGASHI: And I'd just like to note for the record that the last couple of months we have had some staffing assignments related to litigation workload, which has contributed to that logjam.

ACTING CHAIR SHERWOOD: Yes.

MS. HIGASHI: And just when that happens, we just have to stop when the due dates come in. And we will be having some coming up in the near future.

ACTING CHAIR SHERWOOD: Thank you very much.

MS. HIGASHI: We're also working on putting together a master calendar of the cases that we anticipate being able to schedule and hear for the rest of the year, and going out as far in the future as a year from June, just to have a better workload planned. And we're also in the process of interviewing potential law clerks to come on board for the summer months, and that will also help us considerably in the office.

I'd like to report that during the last month, we have had meetings -- one meeting was held with the Leg. Analyst's staff, the Department of Finance staff and SCO staff on the whole issue of how the deficiencies are reported to the Department of Finance and what happens with the deficiency letter and how an amount is finally

appropriated, either through the Local Government Claims Bill or through the Education Trailer Bill on those deficiencies. And that meeting was held so that new staff at the Leg. Analyst's office could be brought on board, in terms of all of the players in the process and the steps that are typically taken.

We also had meetings throughout the last month with the Bureau of State Audits staff, in their preparation of finalizing the report, which is expected to be issued. I think by now, it should be issued.

Last week, we held what is our second annual training of legislative staff, and it was primarily the Leg. Analyst's office coordinated the training and fiscal committee staff came to the meeting. And we also had -- we had representation from both houses. It was a packed room, and it was a pretty good session.

And I have a note that was brought to me, previously. I'd like to Shirley to speak to the issue. We had scheduled a workshop for today.

MS. OPIE: Yes, we had scheduled a rulemaking workshop for this afternoon; and it was brought to my attention that some of the claimant representatives were not aware of it. The notice was included with the agenda. And it's just something that happens. So it sounds like there are a number of groups that did not

know about it and, of course, would like to participate.

So we would like to reschedule that.

ACTING CHAIR SHERWOOD: Thank you.

MS. HIGASHI: And then lastly, I'd like to tell you that we finally received our hearing dates for the budget; and our budget will be heard on April 23rd in the Assembly, and on May 1st in the Senate.

It's also my understanding that as part of those hearings in sub 4, the budget committees, that there may be consideration also given to some of the proposals made by the Leg. Analyst's office that have not been discussed. Some of them I believe have already been discussed, and others still have yet to be heard. So those discussions will come up.

But in terms of the Leg. Analyst's report at issue, there was no mention of the Commission in terms of its own budget. So we'll be finding out, as we get closer to those dates if there are any new issues that the committee staff wishes to have us address at those budget meetings.

ACTING CHAIR SHERWOOD: Very good.

MS. HIGASHI: And so that would be right around the time of the April hearing, as well.

The other is that, recently, the Legislative Analyst's office contacted us and asked for copies of all

of the Parameters and Guidelines and Statements of Decisions and statewide cost estimates for all of the mandates that are being proposed for this year's claims bill. So --

MEMBER STEINMEIER: That's a lot of paper.

MS. HIGASHI: What they will be doing is taking a look at all of those programs and those mandates, in light of the fact that the Legislature has the authority to potentially modify the P's and G's and the claims. And so they've started that process.

As I have reported to you, the Claims Bill has not yet officially been introduced. The language is over at the Assembly Budget Committee. And thus far, for all of the trailer bills for the budget, they're all spot bills. So typically a spot will be amended and the claims bill would go in once the committee wanted to do and we'll keep you posted.

ACTING CHAIR SHERWOOD: Thank you.

MS. HIGASHI: I'd like to just go over the potential changes to the future agendas.

The proposed rulemaking order that was noted for the April agenda will have to come off, now that we aren't having a workshop.

The test claim, Pupil Promotion and Retention, is set for April.

The incorrect reduction claim on the Investment Reports will also be set for April.

For the May agenda, we are hoping to have the Grand Jury Proceedings test claim and Standards-Based Accountability; and Items 3 and 4 here are iffy items. I think Item 4 we will have to move forward to June because of the litigation calendar.

And then the Item D.1, Comprehensive School Safety Programs, reconsideration, and Emergency Procedures, Parameters and Guidelines Amendments, will be moved to the June agenda because of the litigation schedule.

ACTING CHAIR SHERWOOD: So you're still looking at the possibility of three test claims in May.

MS. HIGASHI: I hope. I'll find out.

MEMBER STEINMEIER: And the Brown Act Reform, P's and G's --

MS. HIGASHI: And we'll also have to add the Brown Act Reform P's and G's, and then the Handicapped and Disabled Students will probably show up on June.

ACTING CHAIR SHERWOOD: That will be a significant workload.

MEMBER STEINMEIER: It sounds like a two-binder agenda.

MS. HIGASHI: So we try to keep as close to what

we've projected; but sometimes things happen that we just really have no control over. And I think as we get closer to the budget cycle, it's not just claimants, sometimes it's state agencies. And then pretty soon, we'll be getting into the vacation scheduling. So we're trying to be as flexible as we can. But the requests come in from all parties.

ACTING CHAIR SHERWOOD: Any comments from the Board Members?

MS. HIGASHI: And with that, if you have no further questions, my report is completed.

ACTING CHAIR SHERWOOD: It sounds like we have no further questions.

I believe at this time then we're going to adjourn to closed executive session.

And I would imagine that we would return -- I believe we're looking at 45 minutes.

MS. HIGASHI: Thirty minutes. It will be shorter. Maybe 15 minutes.

ACTING CHAIR SHERWOOD: Okay. We're talking possibly 15 to 30 minutes. So we are going to go into executive session; and if you wish to remain outside, we will contact you, and you can come back in for the closing of the regular session.

Adjournment to closed session, the Commission

will now meet in closed executive session pursuant to Government Code section 11126(e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public's notice and agenda; and to confer with and receive advice from legal counsel regarding potential litigation and Government Code section 11126(a) and 17526, the Commission will also confer on personnel matters listed on the public notice and agenda.

We will reconvene in open session at this location in approximately --

MS. HIGASHI: Let's make it longer.

ACTING CHAIR SHERWOOD: -- at approximately eleven o'clock.

(The Commission on State Mandates met in closed executive session from 10:29 a.m. to 11:07 a.m.)

ACTING CHAIR SHERWOOD: We are reconvening the general session from closed session. The Commission met in closed executive session pursuant to Government Code Section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public's notice and agenda, and potential litigation, and Government Code Section 11126(a) and 17526, to confer

on personnel matters listed on the published notice and agenda.

All required reports from the closed session having been made and with no further business to discuss, I will entertain a motion at this time to adjourn.

MEMBER HARRIGAN: Move.

MEMBER STEINMEIER: Second.

ACTING CHAIR SHERWOOD: We have a motion and we have a second.

The meeting is adjourned.

MEMBER STEINMEIER: Thank you, Bill.

MEMBER LAZAR: Thank you.

ACTING CHAIR SHERWOOD: Thank you.

(The proceedings concluded at 11:08 a.m.)

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REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were reported by me at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings, nor in any way interested in the outcome of the cause named in said matter.

In witness whereof, I have hereunto set my hand this 9th day of April 2002.

DANIEL P. FELDHAUS
CSR #6949, RDR, CRR